

OCC's systems for the clearance and settlement of FX Index Options should facilitate promptness and precision.

III. Conclusion

The Commission finds that the proposal is consistent with the requirements of the Act, particularly with Section 17A(b)(3)(F) of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-94-08) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35140; File No. SR-PSE-94-31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to the Listing and Trading of Small Corporate Offering Registration ("SCOR") Securities on the Exchange

December 22, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 15, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is submitting this rule filing in order to permit the Exchange listing and trading of common stock and preferred stock that qualifies under the Small Corporate Offering Registration ("SCOR") designation.¹

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction

The Exchange is proposing to list and trade common stock and preferred stock that qualifies under the Small Corporate Offering Registration ("SCOR") designation. Under the proposal, the SCOR marketplace will be implemented on a three-year pilot basis and the program will be evaluated at least on an annual basis to determine whether this new marketplace has achieved its policy objectives—to facilitate capital formation for small businesses and to provide public market liquidity. The SCOR program will include any securities of an issuer that has been designated as common stock and/or preferred issued pursuant to (i) Regulation A under the Securities Act of 1933 ("Securities Act") and using the prescribed form as applicable; or (ii) Rule 504 under the Securities Act and using Form U-7 of the North American Securities Administrators Association ("NASAA") or a state variation of such form with substantially similar requirements.² Since such securities are not currently listed or traded on any national securities exchange, the PSE believes that the implementation of the Exchange's proposal will facilitate the capital formation process for small

companies and will supply much-needed liquidity to public investors within a regulated marketplace. In addition, under the proposal, companies will be afforded all of the benefits of an Exchange listing, with the exception of the Blue Sky exemption from state securities registration requirements and automatic marginability.

In August 1992, the Commission adopted certain rules as part of its Small Business Initiatives program. The program includes, in part, substantive changes to the "small issues" exemption from registration requirements under the Securities Act (Regulation A), as well as changes to the "seed capital" registration exemption pursuant to Rule 504 under the Securities Act. These revisions are designed to facilitate the access of small companies to capital markets and to reduce the costs of compliance with the federal securities laws.

Rule 504

The Commission's modifications to Rule 504 include the elimination of several restrictions and other changes that would allow small companies to conduct public offerings of up to \$1 million in unrestricted securities during a twelve-month period. These changes are designed to allow small companies to market offerings directly to prospective investors by bypassing both the venture capital and small underwriting houses. At the state level, offerings may be registered using the SCOR registration form, Form U-7; however, such limited offerings must also qualify under state Blue Sky laws that require delivery of a prospectus, offering circular, or disclosure document to all purchasers prior to sale. The Form U-7 has been supported by the American Bar Association as well as NASAA.³

Regulation A

The Commission revised Regulation A to exempt from registration public offerings of up to \$5 million in a twelve-month period. The disclosure requirements are embodied in the offering statement (SEC Form 1-A), which consists of three parts. The offering circular is contained in Part II and may be prepared in three alternative formats, one of which permits the use of the same simplified disclosure statement (Form U-7) that is prescribed by most states for SCOR offerings.

The Exchange believes these changes to Regulations A and D, in conjunction

⁷ 17 CFR 200.30-3(a)(12) (1994).

¹ The PSE originally proposed to list and trade SCOR securities in 1992. That proposal was published for public comment in Securities Exchange Act Release No. 32514 (June 25, 1993), 58 FR 35496 (July 1, 1993) (File No. SR-PSE-92-42). The Commission received several comment letters regarding the proposal, and subsequently published amendments to the proposal for public comment in Securities Exchange Act Release No. 34328 (July 7,

1994), 59 FR 35776 (July 13, 1994). The Exchange withdrew file no. SR-PSE-92-42 on November 22, 1994, and submitted the instant filing that includes modifications to the proposal in response to comments from the public and from Commission staff.

² Once a single issuance of securities has been accepted for listing on the Exchange, all securities of that class will be considered to be "SCOR" securities for purposes of this rule, including restricted securities (*i.e.*, securities restricted pursuant to federal or state securities laws, by any other law, by any agreement, or in any other manner), provided that such restricted securities may not be eligible for trading on the Exchange.

³ See Small Corporate Offering Registration Program and Form U-7, 1 Blue Sky L. Rep. (CCH) ¶ 6461 (September 1994).

with the efforts of several states that are in the forefront of the small business movement, will clearly benefit both the investing public as well as small companies seeking access to capital markets. The Exchange also believes the expanded use of the Form U-7 in Regulation A offerings will encourage a more effective and simplified system of raising capital. The collective efforts of federal and state agencies to streamline the registration process for small corporate offerings is especially important because the institutional venture capital industry has substantially abandoned the financing of small start-up companies, leaving them the private offering market as the only remaining source of capital. Therefore, the development of the SCOR program has made corporate offerings more flexible and less costly to small companies, without compromising investor protection.

Initial and Continued Listing Requirements

The Exchange has in place a regulatory program that will ensure close scrutiny of any company applying to list its common stock and/or preferred stock under the SCOR program. The listing qualification process for SCOR applicants will be the same as the process in place for other PSE-listed equity issuers. The merit review process is coordinated by the Exchange's Listings Department, which works directly with the Equity Listing Committee. This Committee, which is comprised of floor members, "upstairs" members and member firm representatives, has substantial collective experience in the evaluation of companies for possible listing on the Exchange.

The Exchange's proposed SCOR marketplace is limited to the listing of one class of common stock and preferred stock. To ensure a minimum level of financial performance by issuers under the SCOR program, the Exchange has developed a single set of initial and maintenance listing requirements that will apply to both common stock and preferred stock. In formulating the listing requirements set forth below, the Exchange consulted extensively with committees of NASAA,⁴ the California Department of Corporations, and leaders from the small business community. The Exchange believes that the proposal satisfactorily addresses the mutual

concerns of these individuals and organizations.

Under the proposal, at the time of application and formal request for listing, the issuer must meet all of the following listing requirements. First, the SCOR offering in the class of security for which the issuer is applying for listing must be at least \$5 per share, and constitute at least 150,000 publicly held shares with a minimum public distribution of 250 beneficial holders.⁵ Second, the company must have total net tangible assets of at least \$500,000 and total net worth of at least \$750,000. Third, the issuer must have specific corporate governance policies that comply with PSE Rule 3.3.⁶ Fourth, the issuer must provide the Exchange with audited financial statements that are required to be included in the issuer's Exchange Act registration statement. Fifth, the company must demonstrate that the product, service, or technology is sufficiently developed and that there is a reasonable expectation of future earnings from its business. Finally, the issuer must have registered the securities of the class at the state level using either the state Form U-7 (or the equivalent registration form to which a regulatory review is applied) or a coordinated state filing with the federal Form 1-A offering statement.

In addition, under the proposal, once an issuer's class of security has been approved for listing under the SCOR program, the following requirements must also be met. First, the issuer's class of common stock and/or preferred stock must be registered under section 12(b) of the Exchange Act (before it may be traded on the Exchange). Second, the issuer must comply with the Exchange's listing policies and agreements, as well as the reporting and disclosure requirements of the Exchange Act. Third, in listing additional shares of the same class of common stock or preferred stock, the issuer must meet the applicable federal securities laws and state registration requirements. Finally, an issuer listed under the SCOR program must comply with the

⁵ The term "public beneficial holder" means a beneficial holder who, with respect to the issuer, is not a director or officer or member of the immediate family thereof or an affiliate or associate thereof, and whose ownership of an equity security is less than 5% of the total number of shares issued and outstanding.

⁶ PSE Rule 3.3 contains corporate governance requirements regarding conflicts of interest, independent directors/audit committee, quorum, shareholder approval, annual meetings, solicitation of proxies and consents, and common and preferred stock voting rights. SCOR issues are subject to all of these corporate governance requirements except for the independent directors/audit committee requirement in Rule 3.3(b).

Exchange's listing maintenance requirements set forth in Rule 3.5(r).

Trading Environment and Transaction Reporting

The Exchange intends to allocate common stock and preferred stock listed under the SCOR program to a Specialist for auction market trading. Any transactions in such securities would be reported on a real-time basis. Transactions in SCOR securities would be identified by a special suffix to the ticker symbol so that members, public investors and others can distinguish these securities from other securities traded on the Exchange. Finally, all of the Exchange's rules and equity surveillance procedures would be applicable to transactions in SCOR securities.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.⁷

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings whether the proposed rule change should be disapproved.

⁷ For a discussion of the comments received on the previous PSE SCOR listing proposal see Securities Exchange Release No. 34328, *supra* note 1.

⁴ The Exchange discussed its proposal with the Small Business Capital Formation and the Small Business Sales Practices committees of NASAA.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-94-31 and should be submitted by January 24, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35153; File No. SR-Philadep-94-05]

Self-Regulatory Organization; Philadelphia Depository Trust Company; Notice of Proposed Rule Change Concerning Disposal of Expired Securities Certificates of Warrants and Rights

December 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 6, 1994, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-Philadep-94-05) as described in Items I, II, and III below, which Items have been prepared primarily by Philadep, a self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadep proposes to implement a rule change that would allow the disposal of expired securities certificates of warrants and rights. The proposed rule change would enable Philadep to reduce its administrative expenses associated with keeping expired warrants and rights related certificates in its vault.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, as set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of and the Statutory Basis for the Proposed Rule Change

In order to reduce costs and increase operational efficiency, Philadep proposes to implement a program which would allow it to destroy certain expired securities certificates, specifically expired warrants and rights. This destruction policy would enable Philadep to reduce the administrative and safekeeping expenses associated with keeping expired warrants and rights related certificates in its vault. In implementing this program, Philadep will adhere to several procedures to assure that Philadep does not assume any undue risk. First, Philadep will contact the transfer agent or the issuer of the securities after the securities has reached their expiration dates to verify that the respective warrants or rights have expired. Second, Philadep will obtain written confirmation from the transfer agent or the issuer that the certificates representing such warrants or rights have expired. If there is no transfer agent, Philadep personnel will exercise all reasonable due diligence to confirm the expired nature of the respective certificates, including (1) consulting with Philadep's legal department, its internal audit department, and its senior management and (2) receiving a confirmation from the issuer. Third, Philadep (1) will notify its participants that the certificates have expired in the

judgment of the transfer agent or, where there is no transfer agent exist, other appropriate parties; (2) will delete such securities positions from its participants' account on or after the thirtieth day following the date of the notice; and (3) will mark the securities certificates and send them to the internal audit department for destruction. Additionally, at Philadep's discretion, it may retain copies of the certificates on microfilm or on other mediums.

Philadep believes that the proposed program complies with Section 17A of the Act² in that it is contemplated to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by providing an efficient administrative mechanism to destroy expired securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Philadep believe that the proposed rule change will not pose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Philadep has neither solicited nor received any comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Philadep consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements respecting the proposed rule change that

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 15 U.S.C. § 78q-1 (1988).